

The Welsh Government's Legislative Consent Memorandum on the Advanced Research and Invention Agency Bill

October 2021



1. Background

The UK Government's Advanced Research and Invention Agency Bill

1. The Advanced Research and Invention Agency Bill (the Bill) was introduced in the House of Commons and had its first reading on 2 March 2021.¹ It is sponsored by the Department for Business, Energy and Industrial Strategy. The Bill was re-introduced on 12 May 2021 following a carry-over motion.²

2. The explanatory notes to the Bill state:

"The purpose of this Bill is to establish the Advanced Research and Invention Agency (ARIA) as a statutory corporation. ARIA is a new type of funding body for conducting, commissioning and supporting ambitious scientific research with a tolerance to failure."³

3. The Bill completed its stages in the House of Commons on 7 June 2021. It had its first reading in the House of Lords on 8 June 2021⁴ and its second reading is scheduled for 2 November 2021.

The Welsh Government's Legislative Consent Memorandum

4. Standing Orders 29.1 and 29.2 provide that a Legislative Consent Memorandum is required when a relevant UK Bill modifies or falls within the Senedd's legislative competence.

5. On 9 July 2021, Vaughan Gething MS, Minister for Economy (the Minister), laid before the Senedd a Legislative Consent Memorandum⁵ (the Memorandum) in respect of the Bill.

6. The Business Committee agreed that the Legislation, Justice and Constitution Committee, Economy, Trade and Rural Affairs Committee and the Children, Young People and Education Committee, should report on the Memorandum by 21 October 2021.⁶

¹ [Advanced Research and Invention Agency Bill](#), [HC Bill 264 2019-21]

² [Advanced Research and Invention Agency Bill](#), [HC Bill 1 2021-22]

³ [Advanced Research and Invention Agency Bill](#), [Explanatory Notes, May 2021, paragraph 1](#)

⁴ [Advanced Research and Invention Agency Bill](#), [HL Bill 24]

⁵ Welsh Government, [Legislative Consent Memorandum, Advanced Research and Invention Agency Bill](#), July 2021

⁶ Business Committee, [Timetable for consideration of the Legislative Consent Memorandum on the Advanced Research and Invention Agency Bill](#), July 2021

Provision for which the Senedd's consent is required

- 7.** Paragraphs 12 to 15 of the Memorandum set out the Welsh Government's assessment of the provisions in the Bill which require the Senedd's consent, namely clauses 1 to 10 and their respective Schedules.
- 8.** Clause 1 of the Bill establishes a body corporate called the Advanced Research and Invention Agency ("ARIA") and introduces Schedule 1, which sets out how ARIA is structured and how it will operate.
- 9.** The Welsh Government is of the view that there are no reservations or restrictions which would prevent a similar body being established in relation to Wales.⁷
- 10.** Clause 2 sets out the functions of ARIA, providing that ARIA may, or may commission or support others to, conduct scientific research, develop and exploit scientific knowledge and collect, share, publish and advance scientific knowledge. The provision provides that the activities are not restricted to the UK, although it imposes a duty that regard must be had to what benefit the UK derives from such activities.
- 11.** The Welsh Government is of the view that, as the Senedd can legislate to confer such functions on a body it creates (in relation to Wales), then its consent is required.⁸
- 12.** Clause 3 of the Bill states that in exercising its functions, ARIA may give particular weight to the potential for significant benefits to be achieved or facilitated through scientific research, or the development and exploitation of scientific knowledge, that carries a high risk of failure.
- 13.** The Welsh Government considers that consent is required as the Senedd has the competence to impose this duty on a similar body to ARIA if it were to be created for Wales.⁹
- 14.** Clause 4 provides the Secretary of State with a grant funding power in relation to ARIA, and such grants may be made subject to conditions.
- 15.** The Welsh Government considers that consent is required as it would be within the Senedd's competence to legislate to confer these powers on a similar body to ARIA that it creates.¹⁰

⁷ Memorandum, paragraph 13

⁸ Memorandum, paragraph 13

⁹ Memorandum, paragraph 13

¹⁰ Memorandum, paragraph 13

16. Clause 5 of the Bill provides the Secretary of State with the power to direct ARIA as to the exercise of its functions when considered necessary or expedient to protect national security.

17. The Welsh Government's view is that:

*"Consent is required, as this provision operates in conjunction with the substantive clauses of the Bill and the Senedd has competence to so direct a body established by the Senedd in Wales for the same purposes. This clause is not about national security but the giving of directions."*¹¹

18. Clause 6 provides that ARIA must provide the Secretary of State with information specified for the purposes of, or in connection with, his functions in relation to ARIA.

19. The Welsh Government considers that consent is required as it would again be within the Senedd's competence to impose this duty on a similar body to ARIA that it creates.¹²

20. Clause 7 introduces Schedule 2, which contains provision about schemes for the transfer of staff and property, rights and liabilities to ARIA.

21. The Welsh Government considers that consent is required as the Senedd may confer the power to make similar schemes on the Welsh Ministers.¹³

22. Clause 8 of the Bill states that the Secretary of State may dissolve ARIA by regulations at any time after the date on which 10 years have elapsed since the passing of the Act.

23. The Welsh Government considers that consent is required because the Senedd has competence to legislate for the dissolution of a body it creates by regulations in the same terms.¹⁴

24. Clause 9 introduces Schedule 3, which amends the *Government of Wales Act 2006* (the 2006 Act) by adding reference to ARIA to paragraph 87 of Part 2 of Schedule 7A, thereby making ARIA a "particular authority" under paragraph 197 of Schedule 7A. This adds a new specific reservation to the 2006 Act and has the effect of preventing the Senedd from legislating in respect of ARIA, including removing or modifying ARIA's functions.

¹¹ Memorandum, paragraph 13

¹² Memorandum, paragraph 13

¹³ Memorandum, paragraph 13

¹⁴ Memorandum, paragraph 13

25. The Welsh Government considers that, although the Senedd does not have competence to legislate to make this provision, making ARIA a specific reservation nevertheless amounts to a modification of the Senedd’s competence and, as such, consent of the Senedd is required on that basis (pursuant to Standing Order 29.1).¹⁵

26. Clause 10 states that the Secretary of State may by regulations modify any “relevant provision” that they consider appropriate in consequence of any provision of the Bill or any regulations made under clause 8. For the purposes of the provision, “relevant provision” means primary legislation passed before the end of the UK Parliamentary Session in which the Act is passed, or retained EU legislation. As such, this is a Henry VIII power.

27. Clause 11 makes further provision for the scope of the powers to make regulations in Clause 8 and Schedule 1 of the Bill. It also sets out the parliamentary procedures to which the various delegated legislative powers under the Bill are subject. By virtue of clause 11(4)(b), regulations made under clause 10 that amend, repeal or revoke any provision of primary legislation or retained EU legislation will be subject to the affirmative scrutiny procedure in the UK Parliament.

28. The Welsh Government considers that consent is required for clause 10 as the Senedd may include a provision similar to this in any Act, but only in so far as it relates to modification by the Welsh Ministers of Welsh legislation. It considers that the Senedd’s consent is required for clause 11 as it operates in conjunction with the substantive provisions of the Bill that require a legislative consent memorandum.

29. The UK Government is of the same view as the Welsh Government regarding consent of the Senedd being required, other than in respect of clause 5. The UK Government is of the view that this clause relates to national security, which is a reserved matter.

Reasons for making provision for Wales in the Bill

30. Paragraph 16 of the Memorandum sets out the reasons for making the provisions for Wales in the Bill.

“ARIA will be a new body with a UK-wide remit with the potential to fund advanced research and invention across the UK in a competitively awarded manner based on merit. It does not replace or duplicate any existing UK

¹⁵ Memorandum, paragraph 14

reserved body or any body established in Wales, and it would offer greater opportunity across the UK."

31. However, the paragraph closes with the following caveat:

"...the majority of the provisions of the ARIA Bill are within the legislative competence of the Senedd and the Bill does not as presently drafted provide for any influence over ARIA's activities by the devolved governments."

The Welsh Government's position

32. Paragraph 17 of the Memorandum states:

"Our position is that we protect the powers of the Senedd. The ARIA Bill seeks to reserve a number of powers to UK Government with respect to research and innovation in Wales and we consider this is unacceptable."

33. Paragraph 21 of the Memorandum concludes:

"...it would not be appropriate for the Senedd to give its consent for this Bill for two reasons: first the reservation of new powers to the UK Parliament with respect to research and innovation is unacceptable; secondly the Bill makes no provision for the involvement of the devolved governments in the governance of ARIA. I have communicated this to the BEIS Minister and as no accommodation of our concerns have been forthcoming to date, I recommend that the Senedd does not give its consent in relation to this Bill in its current form."

The report of the House of Lords Delegated Powers and Regulatory Reform Committee

34. On 24 June 2021, the Delegated Powers and Regulatory Reform Committee in the House of Lords published its report on the Bill.¹⁶ We note its findings in our consideration below.

¹⁶ Delegated Powers and Regulatory Reform Committee, House of Lords, 4th Report of Session 2021–22, *Advanced Research and Invention Agency Bill, Telecommunications (Security) Bill*, June 2021, HL Paper 29

2. Committee consideration

35. We considered the Memorandum at our meeting on 4 October 2021.¹⁷

Our view

36. We note the Welsh Government's assessment that clauses 1 to 10 of, and their respective Schedules to, the Bill require the Senedd's consent as set out in the Memorandum. We agree with the Welsh Government's assessment on all but one of the clauses listed in the Memorandum.

37. With respect to clause 5, the Welsh Government is of the view that the Senedd's consent is required, as the purpose of clause 5 is the giving of directions. Having considered the issues raised by the Welsh Government in the Memorandum, we do not share this view and consider that the clause relates to national security, and as such is a reserved matter.

38. We note that the Minister has raised concerns with the UK Government regarding ARIA being made a reserved authority under Schedule 7A to the *Government of Wales Act 2006* (as a result of clause 9 and Schedule 3). We also note the Minister has raised concerns about the lack of provisions for the involvement of devolved governments in the governance of ARIA. We further note the Minister's statement in the Memorandum that "no accommodation of our concerns have been forthcoming to date", and this is disappointing.

Conclusion 1. We share the concerns raised by the Welsh Government regarding clause 9 of, and Schedule 3 to, the Bill as it results in a new specific reservation being introduced to the *Government of Wales Act 2006*, restricting the competence of the Senedd to legislate. We therefore agree that reserving new powers to the UK Parliament with respect to research and innovation is unacceptable.

Recommendation 1. The Minister should, in advance of the of the Senedd's debate on the relevant consent motion, provide an update on discussions with the UK Government, and confirm whether he has sought an amendment to the Bill to remove the restriction on the Senedd's competence in Schedule 3 (as introduced by clause 9).

Conclusion 2. We are also concerned that clause 10 of the Bill contains a Henry VIII power, which we consider could be used to amend the 2006 Act. As we have recently said in our report on the Welsh Government's Legislative Consent Memorandum on the Professional

¹⁷ Legislation, Justice and Constitution Committee, 11 October 2021

Qualifications Bill, the legislative competence of the Senedd should not be modified by regulations made by the UK Ministers.

Recommendation 2. The Minister should seek an amendment to the Bill to the effect that the powers in the Bill cannot be used by UK Ministers to make regulations that amend the *Government of Wales Act 2006*.

39. Finally, we acknowledge the Welsh Government's position that it will not recommend that the Senedd gives consent to the Bill in its current form.

Matters referred to by the House of Lords Delegated Powers and Regulatory Reform Committee

40. The Delegated Powers and Regulatory Reform Committee (DPRRC) in its report on the Bill objects to clause 8 on principle¹⁸ and states that the UK Government's "justifications for including a power to dissolve ARIA by statutory instrument are inadequate".¹⁹ The report states:

*"Accordingly, we take the view that the power in clause 8 for Ministers to dissolve ARIA by statutory instrument is inappropriate and should be removed from the Bill. If ARIA is to be dissolved, it should be done by Parliament in primary legislation rather than by Ministers in secondary legislation."*²⁰

41. As regards clause 10, the report states:

*"In the absence of a convincing explanation why clause 10 should contain such a wide-ranging Henry VIII power, we take the view that clause 10 is inappropriately wide. Any identifiable need for consequential provision should be added to Schedule 3."*²¹

42. We draw these matters to the attention of the Senedd.

¹⁸ HL Paper 29, paragraph 6

¹⁹ HL Paper 29, paragraph 7

²⁰ HL Paper 29, paragraph 13

²¹ HL Paper 29, paragraph 18